PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)
	)
H. Joiner et al.	) Art Unit: 3628
	)
Application No. 10/029,591	) Examiner: Robinson Boyce, Akiba K.
	)
Filed: 12/21/2001	) Date: 01/16/2007
	)
For: SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR A NETWORK ANALYZER BUSINESS MODEL	)
	)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

REPLY BRIEF (37 C.F.R. § 41.37)

This Reply Brief is being filed within two (2) months of the mailing of the Examiner's Answer mailed on 11/16/2006.

Following is an issue-by-issue reply to the Examiner's Answer.

Issue # 1:

The Examiner has rejected Claims 1-8, 25 and 26 under 35 U.S.C. 101 as being directed toward non-statutory subject matter.

Group #1: Claims 1-8, 25 and 26

In the Examiner's Answer mailed 11/16/2006, the Examiner has stated that "[d]ue to further consideration of the claims, and also the argument presented in the appeal brief, the examiner has withdrawn the 35 USC 101 rejection of claims 1-8, 25, and 26."

Issue # 2:

The Examiner has rejected Claims 1-29 under 35 U.S.C. 103(a) as being unpatentable over Wolf et al. (U.S. Patent No. 6,278,694), in view of Turek et al. (U.S. Patent No. 6,021,439).

Group #1: Claims 1, 7- 9, 15-17 and 23-24

With respect to independent Claims 1, 9, and 17, the Examiner has relied on Col. 3, line 16-Col. 2, line 20 and Figure 1 in Wolf (appellant assumes the Examiner meant Col. 3, line 16-Col. 4, line 20) to make a prior art showing of appellant's claimed "consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents" (see this or similar, but not identical language in each of the foregoing claims).

Appellant respectfully asserts that Wolf expressly discloses "remote probes P1-P3 [that] transmit their monitoring data to a network manager 20" (see Col. 3, lines 37-39). Clearly, transmitting monitoring data to a single network manager (Figure 1), as in Wolf, does not meet appellant's specific claim language, namely that "the network traffic information [is consolidated] utilizing a plurality of host controllers coupled to the agents" (emphasis added), as claimed.

In the Office Action mailed 10/26/2005, the Examiner has argued that Col. 8, lines 13-14 from Wolf disclose that the network manager produces a traffic report for the selected address pairs.

The Examiner has further argued that the network manager of Wolf contains a memory storage medium that stores three programs (Col. 5, lines 1-7) where the first program controls the polling and processing of polled monitoring data from the probes P1 and P2, while the second program does the same for probe P3. The Examiner has thus concluded that the network manager has a plurality of programs that handle network communications for each probe, thus handling different zones.

Appellant disagrees and respectfully asserts that Wolf only teaches that the "program X controls polling and processing of polled monitoring data from probes P1 and P2…[and] program Y controls the polling and processing of polled monitoring data from the probe P3" (Col. 5, lines 3-7). Thus, each program only controls polling and processing. Simply nowhere does Wolf teach that the programs "consolidat[e] the network traffic information" (emphasis added), as claimed by appellant.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "[t]he first program controls polling and processing of polled monitoring data from the probes P1 and P2, while the second program does the same for probe P3, thus demonstrating the fact that this network manager has a plurality of programs that handle network communications for each probe, thus handling different zones."

Appellant disagrees and again respectfully asserts that Wolf only teaches that the "program X controls polling and processing of polled monitoring data from probes P1 and P2…[and] program Y controls the polling and processing of polled monitoring data from the probe P3" (Col. 5, lines 3-7 – emphasis added). However, the mere disclosure that the two programs both control polling and processing, as in Wolf, simply fails to even suggest that the programs "consolidat[e] the network traffic information" (emphasis added), as claimed by appellant.

Still with respect to independent Claims 1, 9, and 17, the Examiner has relied on Col. 3, line 16-Col. 2, line 20; Figure 1; Figure 7a; and Figure 8 in Wolf to make a prior art showing of appellant's claimed "reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers" (see this or similar, but not identical language in each of the foregoing claims).

Appellant respectfully asserts that the descriptions in Wolf of Figures 7A and 8, as relied on by the Examiner, clearly teach that "the network manager 20 produces a traffic report for the selected address pairs" (see Col. 8, lines 13-14-emphasis added). Appellant asserts that a network manager that reports does not meet appellant's claimed "reporting…utilizing a plurality of zone controllers" (emphasis added), as claimed. Thus, it appears that the Examiner has relied on the network manager in Wolf to meet both of appellant's claimed consolidating and reporting. However, appellant claims utilizing a plurality of host controllers for consolidating and utilizing a plurality of zone controllers for reporting (two separate entities, as claimed).

In the Office Action dated 10/26/2005, the Examiner gave the same arguments as those stated above to meet appellant's specific claim language. Appellant again respectfully asserts that Wolf only teaches that the "program X controls polling and processing of polled monitoring data from probes P1 and P2…[and] program Y controls the polling and processing of polled monitoring data from the probe P3" (Col. 5, lines 3-7). Thus, each program only controls polling and processing. Simply nowhere does Wolf teach that the programs "[report] on the network traffic information to a user" (emphasis added), as claimed by appellant.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "Wolf discloses that the network manager produces a traffic report for the selected address pairs in col. 8, lines 13-14" and claims that "[t]his limitation does meet the applicant's claimed [language]… since the network manager of Wolf contains a memory storage medium that stores three programs in col. 5, lines 1-7."

Appellant disagrees and respectfully points out that Wolf teaches that "the programs X and Y control the collection of monitoring data, and the program Z controls the preparation of traffic reports" (Col. 5, lines 9-11 – emphasis added). On the other hand, appellant claims "reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers" (emphasis added), as claimed by appellant. Merely teaching that "program Z controls the preparation of traffic reports" (emphasis added), as in Wolf, clearly fails to disclose, and even *teaches away* from, appellant's claimed "reporting on the network traffic information to a user utilizing a plurality of zone controllers" (emphasis added), as claimed.

Also with respect to independent Claims 1, 9, and 17, the Examiner has relied on the following excerpt from Turek to make a prior art showing of appellant's claimed "determining a reoccurring fee associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers" (see this or similar, but not identical language in each of the foregoing claims).

> "In the management server implementation shown in FIG. 7, the server manages the quality-of-service information on behalf of one or more instrumented Web servers, perhaps for a service fee. Alternatively, the management server is used to collect the Q-o-S information on behalf of a set of instrumented Web servers, and a central controller located elsewhere in the network provides analysis (and, if desired, distribution and/or publication, e.g., for a fee) of such data." (Col. 8, lines 38-45)

Appellant respectfully asserts that the above excerpt from Turek relied on by the Examiner merely teaches managing quality-of-service, distribution and/or publication for a service fee. However, generally mentioning a service fee does not even suggest "determining a reoccurring fee" (emphasis added), and especially not where the fee is "associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers," as claimed by appellant. Again, appellant emphasizes that none of the excerpts relied on by the Examiner in Wolf and Turek specifically teach the utilization of three different entities, namely agents, host controllers and zone controllers, let alone the aforementioned reoccurring fee which is tailored for such a framework, in the manner claimed by appellant.

In the Office Action dated 10/26/2005, the Examiner has relied on Col. 8, lines 38-45 in arguing that Turek discloses that "the distribution for a fee occurs on behalf of one or more instrumented Web servers, meaning that these fees reoccur since more than one Web server needs to be accommodated." In addition, the Examiner has argued that since "the Web server handles the communication in the network, the fee is therefore associated with the agents, the host controller and zone controllers."

Appellant respectfully disagrees and asserts that such excerpt only teaches that "the server manages the quality-of-service information on behalf of one or more instrumented Web servers, perhaps for a service fee." Simply because a fee may be charged for managing information for

multiple Web servers (associated with a particular company, for example) does not inherently mean that the fee is reoccurring, as the Examiner seems to contend. Furthermore, Turek discloses that the service fee is for managing the quality-of-service information on behalf of at least one Web server. Simply managing quality-of-service information does not inherently mean that the fee is also "associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers" (emphasis added), as claimed by appellant. In addition, the Examiner contends that the fee is associated with the agents, the host controller and zone controllers. However, it appears that the Examiner has not taken into consideration the full weight of appellant's claims, since appellant claims that the reoccurring fee is "based on a number of at least one of the agents, the host controllers, and the zone controllers" (emphasis added), as claimed.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "col. 8, lines 38-45 discloses that *the distribution for a fee* occurs on behalf of one or more instrumented Web servers, meaning that these fees reoccur since more than one Web server needs to be accommodated." The Examiner has further argued that "[s]ince these fees are determined according to Web server, and the Web server handles the communication in the network, the fee is therefore associated with the agents, the host controller and zone controllers."

Appellant disagrees and respectfully asserts that Turek only teaches that "a central controller located elsewhere in the network provides analysis (and, if desired, distribution and/or publication, e.g., for a fee) of such data" (Col. 8, lines 43-45 – emphasis added) and further teaches that "the management server is used to collect the Q-o-S information on behalf of a set of instrumented Web servers" (Col. 8, lines 41-43 – emphasis added). Clearly, such excerpt in Turek is only generally teaching charging a fee for distributing and/or publishing Quality of Service information, which does not rise to the level of specificity of appellant's claimed reoccurring fee, as claimed. Specifically, the distribution and/or publication that is provided for a fee in Turek only relates to Q-o-S information, and is not disclosed to specifically be "based on a number of at least one of the agents, the host controllers, and the zone controllers" (emphasis added), as claimed by appellant.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure. *In re Vaeck,*947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Appellant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #2: Claims 2, 10 and 18

The Examiner has relied on the rejections in Claim 1 with respect to the Wolf reference, and specifically has relied on Figure 1 in Wolf to make a prior art showing of appellant's claimed "determining the reoccurring fee associated with the reporting based on the number of the agents." Appellant notes, however, that the proposed combination of Wolf and Turek simply does not disclose any sort of fee that is specifically based on the number of particular components claimed, for tailoring a reoccurring fee for the unique claimed framework. In particular, appellant emphasizes that Figure 1 in Wolf only shows a multi-segment network and a network manager, and after careful review of the description of Figure 1, appellant notes that simply nowhere is there even a suggestion of any sort of fee, let alone "determining the reoccurring fee associated with the reporting based on the number of the agents" (emphasis added), as appellant claims.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "the combination of Wolf and Turek disclose this limitation as described above in the rejection" and argues that "[t]hese claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons." Appellant disagrees and again respectfully asserts

that Turek, as relied on by the Examiner, only generally discloses a fee for distribution and/or publication of Q-o-S information, which is not disclosed to specifically be "based on the number of the agents," as appellant specifically claims. Thus, the proposed combination of Wolf and Turek simply does not disclose any sort of "determining [a] reoccurring fee," much less "determining the reoccurring fee associated with the reporting based on the number of the agents" (emphasis added), as claimed by appellant.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #3: Claims 3, 11 and 19

The Examiner has relied on his rejections in Claim 1 with respect to the Wolf reference, and specifically has relied on Figure 1 in Wolf to make a prior art showing of appellant's claimed "determining the reoccurring fee associated with the reporting based on the number of the host controllers." Appellant notes, however, that the proposed combination of Wolf and Turek simply does not disclose any sort of fee that is specifically based on the number of particular components claimed, for tailoring a reoccurring fee for the unique claimed framework. In particular, appellant emphasizes that Figure 1 in Wolf only shows a multi-segment network and a network manager, and after careful review of the description of Figure 1, appellant notes that simply nowhere is there even a suggestion of any sort of fee, let alone "determining the reoccurring fee associated with the reporting based on the number of the host controllers" (emphasis added), as appellant claims.

In the Examiner's Answer mailed 11/16/2006, the Examiner has again argued that "the combination of Wolf and Turek disclose this limitation as described above in the rejection" and has further asserted that "[t]hese claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons." Appellant disagrees and again respectfully asserts that Turek, as relied on by the Examiner, only generally discloses a fee for distribution and/or publication of Q-o-S information, which is not disclosed to specifically be "based on the number of the host controllers," as appellant specifically claims. Thus, the

proposed combination of Wolf and Turek simply does not disclose any sort of "determining [a] reoccurring fee," much less "determining the reoccurring fee associated with the reporting based on the number of the host controllers" (emphasis added), as claimed by appellant.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #4: Claims 4, 12 and 20

The Examiner has relied on his rejections in Claim 1 with respect to the Wolf reference, and specifically has relied on Figure 1 in Wolf to make a prior art showing of appellant's claimed "determining the reoccurring fee associated with the reporting based on the number of the zone controllers." Appellant notes, however, that the proposed combination of Wolf and Turek simply does not disclose any sort of fee that is specifically based on the number of particular components claimed, for tailoring a reoccurring fee for the unique claimed framework. In particular, appellant emphasizes that Figure 1 in Wolf only shows a multi-segment network and a network manager, and after careful review of the description of Figure 1, appellant notes that simply nowhere is there even a suggestion of any sort of fee, let alone "determining the reoccurring fee associated with the reporting based on the number of the zone controllers" (emphasis added), as appellant claims.

In the Examiner's Answer mailed 11/16/2006, the Examiner has again argued that "the combination of Wolf and Turek disclose this limitation as described above in the rejection" and has further asserted that "[t]hese claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons." Appellant disagrees and again respectfully points out that Turek, as relied on by the Examiner, only generally discloses a fee for distribution and/or publication of Q-o-S information, which is not disclosed to specifically be "based on the number of the zone controllers," as appellant specifically claims. Thus, the proposed combination of Wolf and Turek simply does not disclose any sort of "determining [a] reoccurring fee," much less "determining the reoccurring fee associated with

the reporting based on the number of the zone controllers" (emphasis added), as claimed by appellant.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #5: Claims 5, 13 and 21

Appellant notes that the Examiner has failed to even address appellant's claimed "adding additional agents coupled to the host controllers." Appellant respectfully asserts that simply nowhere is there any disclosure of such specific claim language in either the Wolf or Turek references. Further, appellant emphasizes the relevant arguments made above with respect to Issue #2, Group #1.

In the Examiner's Answer mailed 11/16/2006, the Examiner has again argued that "the combination of Wolf and Turek disclose this limitation as described above in the rejection" and has further argued that "[t]hese claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons." Appellant respectfully disagrees.

First, appellant respectfully asserts that simply nowhere in the Examiner's rejection does the Examiner specifically address appellant's claimed "adding additional agents coupled to the host controllers." Second, independent claims 1, 9 and 17 simply do not include such claim language, and therefore such claim language was not addressed with respect to the rejection of the foregoing independent claims. Thus, appellant again respectfully asserts that simply nowhere is there any disclosure of such specific claim language in either the Wolf or Turek references.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #6: Claims 6, 14 and 22

Appellant notes that the Examiner has failed to even address appellant's claimed "adjusting the reoccurring fee based on the number of additional agents." Appellant respectfully asserts that simply nowhere is there any disclosure of such specific claim language in either the Wolf or Turek references. Further, appellant emphasizes the arguments made above with respect to Issue #2, Group #1.

In the Examiner's Answer mailed 11/16/2006, the Examiner has again argued that "the combination of Wolf and Turek disclose this limitation as described above in the rejection" and has further asserted that "[t]hese claims also depend from independent claims 1, 9 and 17, and disclose similar features, and are therefore rejected for similar reasons." Appellant respectfully disagrees.

First, appellant respectfully asserts that simply nowhere in the Examiner's rejection does the Examiner specifically address appellant's claimed "adjusting the reoccurring fee based on the number of additional agents." Second, independent claims 1, 9 and 17 simply do not include such claim language, and therefore such claim language was not addressed with respect to the rejection of the foregoing independent claims. Thus, appellant again respectfully asserts that simply nowhere is there any disclosure of such specific claim language in either the Wolf or Turek references.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #7: Claim 25

With respect to independent Claim 25, the Examiner has relied on Col. 3, line 16-Col. 2, line 20 and Figure 1 in Wolf (appellant assumes the Examiner meant Col. 3, line 16-Col. 4, line 20) to make a prior art showing of appellant's claimed "consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents."

Appellant respectfully asserts that Wolf expressly discloses "remote probes P1-P3 [that] transmit their monitoring data to a network manager 20" (see Col. 3, lines 37-39). Clearly, transmitting monitoring data to a single network manager (Figure 1), as in Wolf, does not meet appellant's specific claim language, namely that "the network traffic information [is consolidated] utilizing a plurality of host controllers coupled to the agents" (emphasis added), as claimed.

In the Office Action mailed 10/26/2005, the Examiner has argued that Col. 8, lines 13-14 from Wolf disclose that the network manager produces a traffic report for the selected address pairs. The Examiner has further argued that the network manager of Wolf contains a memory storage medium that stores three programs (Col. 5, lines 1-7) where the first program controls the polling and processing of polled monitoring data from the probes P1 and P2, while the second program does the same for probe P3. The Examiner has thus concluded that the network manager has a plurality of programs that handle network communications for each probe, thus handling different zones.

Appellant respectfully asserts that Wolf only teaches that the "program X controls polling and processing of polled monitoring data from probes P1 and P2…[and] program Y controls the polling and processing of polled monitoring data from the probe P3" (Col. 5, lines 3-7). Thus, each program only controls polling and processing. Simply nowhere does Wolf teach that the programs "consolidat[e] the network traffic information" (emphasis added), as claimed by appellant.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "[t]he first program controls polling and processing of polled monitoring data from the probes P1 and P2, while the second program does the same for probe P3, thus demonstrating the fact that this network manager has a plurality of programs that handle network communications for each probe, thus handling different zones."

Appellant disagrees and again respectfully asserts that Wolf only teaches that the "program X controls polling and processing of polled monitoring data from probes P1 and P2…[and] program Y controls the polling and processing of polled monitoring data from the probe P3"

(Col. 5, lines 3-7). However, the mere disclosure that the two programs both control polling and processing, as in Wolf, simply fails to even suggest that the programs "consolidat[e] the network traffic information" (emphasis added), as claimed by appellant.

Still with respect to independent Claim 25, the Examiner has relied on Col. 3, line 16-Col. 2, line 20; Figure 1; Figure 7a; and Figure 8 in Wolf to make a prior art showing of appellant's claimed "reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers."

Appellant respectfully asserts that the descriptions in Wolf of Figures 7A and 8, as relied on by the Examiner, clearly teach that "the network manager 20 produces a traffic report for the selected address pairs" (see Col. 8, lines 13-14-emphasis added). Appellant respectfully asserts that a network manager that reports does not meet appellant's claimed "reporting…utilizing a plurality of zone controllers" (emphasis added), as claimed. Thus, it appears that the Examiner has relied on the network manager in Wolf to meet both of appellant's claimed consolidating and reporting. However, appellant claims utilizing a plurality of host controllers for consolidating and utilizing a plurality of zone controllers for reporting (two separate entities, as claimed).

In the Office Action dated 10/26/2005, the Examiner gave the same arguments as those stated above to meet appellant's specific claim language. Appellant again asserts that Wolf only teaches that the "program X controls polling and processing of polled monitoring data from probes P1 and P2…[and] program Y controls the polling and processing of polled monitoring data from the probe P3" (Col. 5, lines 3-7). Thus, each program only controls polling and processing. Simply nowhere does Wolf teach that the programs "[report] on the network traffic information to a user" (emphasis added), as claimed by appellant.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "Wolf discloses that the network manager produces a traffic report for the selected address pairs in col. 8, lines 13-14" and has argued that "[t]his limitation does meet the applicant's claimed [language]… since the network manager of Wolf contains a memory storage medium that stores three programs in col. 5, lines 1-7."

Appellant disagrees and respectfully points out that Wolf teaches that "the programs X and Y control the collection of monitoring data, and the program Z controls the preparation of traffic reports" (Col. 5, lines 9-11). On the other hand, appellant claims "reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers" (emphasis added), as claimed by appellant. However, merely teaching that "program Z controls the preparation of traffic reports" (emphasis added), as in Wolf, clearly fails to disclose, and even *teaches away* from, appellant's claimed "reporting on the network traffic information to a user utilizing a plurality of zone controllers" (emphasis added), as claimed by appellant.

Also with respect to independent Claim 25, the Examiner has relied on the following excerpt from Turek to make a prior art showing of appellant's claimed "determining a reoccurring fee associated with the reporting based on a number of the agents, the host controllers, and the zone controllers."

> "In the management server implementation shown in FIG. 7, the server manages the quality-of-service information on behalf of one or more instrumented Web servers, perhaps for a service fee. Alternatively, the management server is used to collect the Q-o-S information on behalf of a set of instrumented Web servers, and a central controller located elsewhere in the network provides analysis (and, if desired, distribution and/or publication, e.g., for a fee) of such data." (Col. 8, lines 38-45)

Appellant respectfully asserts that the above excerpt from Turek relied on by the Examiner merely teaches managing quality-of-service, distribution and/or publication for a service fee. However, generally mentioning a service fee does not even suggest "determining a reoccurring fee" (emphasis added), and especially not where the fee is "associated with the reporting based on a number of the agents, the host controllers, and the zone controllers," as claimed by appellant. Again, appellant emphasizes that none of the excerpts relied on by the Examiner in Wolf and Turek specifically teach the utilization of three different entities, namely agents, host controllers and zone controllers, let alone the aforementioned reoccurring fee which is tailored for such a framework, in the manner claimed by appellant.

In the latest Office Action dated 10/26/2005, the Examiner has relied on Col. 8, lines 38-45 in arguing that Turek discloses that "the distribution for a fee occurs on behalf of one or more

instrumented Web servers, meaning that these fees reoccur since more than one Web server needs to be accommodated." In addition, the Examiner has argued that since "the Web server handles the communication in the network, the fee is therefore associated with the agents, the host controller and zone controllers."

Appellant respectfully disagrees and asserts that such excerpt only teaches that "the server manages the quality-of-service information on behalf of one or more instrumented Web servers, perhaps for a service fee." Simply because a fee may be charged for managing information for multiple Web servers (associated with a particular company, for example) does not inherently mean that the fee is reoccurring, as the Examiner seems to contend. Furthermore, Turek discloses that the service fee is for managing the quality-of-service information on behalf of at least one Web server. Simply managing quality-of-service information does not inherently mean that the fee is also "associated with the reporting based on a number of the agents, the host controllers, and the zone controllers" (emphasis added), as claimed by appellant. In addition, the Examiner contends that the fee is associated with the agents, the host controller and zone controllers. However, it appears that the Examiner has not taken into consideration the full weight of appellant's claims, since appellant claims that the reoccurring fee is "based on a number of the agents, the host controllers, and the zone controllers" (emphasis added), as claimed.

Appellant notes that in the Examiner's Answer mailed 11/16/2006, the Examiner has failed to respond to appellant's above arguments. Appellant again emphasizes that Turek fails to even suggest "determining a reoccurring fee associated with the reporting based on a number of the agents, the host controllers, and the zone controllers," as claimed, for at least the reasons argued above.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #8: Claims 26-29

With respect to independent Claims 26 and 28, the Examiner has again relied on Col. 8, lines 38-45 in Turek (as excerpted above) to make a prior art showing of appellant's claimed "determining a fee associated with the distributed network analysis based on a number of the information collectors" (see this or similar, but not identical language in each of the foregoing claims). Yet again, appellant respectfully asserts that such excerpt merely teaches managing quality-of-service, distribution and/or publication for a service fee. However, generally mentioning a service fee does not even suggest "determining a fee" (emphasis added), and especially not where the fee is "associated with the distributed network analysis based on a number of the information collectors," as claimed by appellant.

In the Office Action dated 10/26/2005, the Examiner has relied on the same arguments as stated above to meet appellant's specific claim language. Appellant again respectfully asserts that the Examiner only argues that the fee is associated with the agents, the host controller and zone controllers. However, appellant claims that the reoccurring fee is "based on a number of the information collectors" (emphasis added), and not simply associated with the agents, the host controller and zone controllers, as note by the Examiner.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "this limitation is disclosed in Turek as described above in preceding paragraph." Appellant disagrees and again respectfully asserts that Turek's generally disclosed service fee does not rise to the level of specificity of appellant's claimed reoccurring fee that is "based on a number of the information collectors" (emphasis added), as claimed.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Issue # 3:

The Examiner has rejected Claims 30-34 under 35 U.S.C. 103(a) as being unpatentable over Wolf et al. (U.S. Patent No. 6,278,694), in view of Turek et al. (U.S. Patent No. 6,021,439), in further view of Furukawa et al. (U.S. Patent No. 6,145,011).

Group #1: Claim 30

The Examiner has relied on Col. 43, lines 13-15 in Furukawa to make a prior art showing of appellant's claimed technique "wherein the reoccurring fee is based on a tiered system." Appellant respectfully asserts that such excerpt only discloses that a "degree of priority is represented in numeric values, on an 8-tiered system." Appellant emphasizes that Furukawa's degree of priority relates to the order in which ICS network frames are sent. Clearly, such priority utilizing a tiered system does not meet any sort of reoccurring fee, let alone where "the reoccurring fee is based on a tiered system," as appellant specifically claims.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "[i]n col. 43, line 13-15, Furukawa discloses an 8-tiered system" and "Furukawa discloses this for the purpose of showing that an 8-tiered system can be incorporated into an information charging system as shown in col....21, line 66-col. 22, line 4."

Appellant disagrees and again respectfully asserts that Furukawa's degree of priority relates to a "speed class," which "is a system where the communication speed is represented with numeric values or the like, instead of with units of speed" (Col. 42, lines 64-66 – emphasis added). In addition, the separately disclosed charging system of Furukawa only includes "charging...by counting ICS user frames...charging...by counting the transferred information in the ICS user frame, and...charging for a certain period" (Col. 21, line 67-Col. 22, line 7). Thus, the 8-tiered system disclosed in Furukawa simply relates to communication speed, and not to the charging system. Clearly, the mere disclosure of using a degree of priority for a tiered system related to communication speed, as in Furukawa, simply fails to even suggest a technique "wherein the reoccurring fee is based on a tiered system" (emphasis added), as claimed by appellant.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #2: Claim 31

The Examiner has again relied on Col. 43, lines 13-15 in Furukawa to make a prior art showing of appellant's claimed technique "wherein the number of the at least one of the agents, the host controllers, and the zone controllers are set for each tier." Appellant respectfully asserts that such excerpt only relates to a degree of priority that is based on a tiered system which is used for determining a priority in which ICS network frames are sent. Further, Furukawa teaches that the tier based priority system is implemented for "a single speed class." Thus, the tiered system is implemented within each class, and determines within each class the priority in which frames are sent. Clearly, such disclosure does not meet appellant's specific claim language, namely that "the number of the at least one of the agents, the host controllers, and the zone controllers are set for each tier."

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "[i]n Col. 43, lines 13-15, an 8-tiered system for classes is disclosed by Faraway" (appellant assumes the Examiner is referring to Furukawa)" and that "…[Furukawa] discloses this limitation for the purpose of showing more than one tier for different classes in the system."

Appellant disagrees and again respectfully asserts that Furukawa's degree of priority relates to a "speed class," which "is a system where the communication speed is represented with numeric values or the like, instead of with units of speed" (Col. 42, lines 64-66 – emphasis added). Further, Furukawa teaches that the tier based priority system is implemented for "a single speed class" (Col. 43, line 16). Thus, the tiered system is implemented within each class, and determines within each class the priority in which frames are sent, which fails to teach a technique "wherein the number of the at least one of the agents, the host controllers, and the zone controllers are set for each tier," as claimed by appellant.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #3: Claim 32

The Examiner has relied on Col. 21, line 65-Col. 22, line 2 in Furukawa, and specifically Furukawa's disclosed network charging system, to make a prior art showing of appellant's claimed technique "wherein the reoccurring fee is based on a non-linear function." Appellant respectfully asserts that such excerpt discloses that in the network charging system "the charging is performed by counting ICS user frames to be sent or received when a communication is made." Clearly, charging based on a number of user frames sent, as in Furukawa, does not meet appellant's claimed "non-linear function" (emphasis added), as claimed.

In the Examiner's Answer mailed 11/16/2006, the Examiner has stated that "[i]n Col. 21, line 65-col. 22, line 2, a network charging system is disclosed for the purpose of showing charging according to user frames" (emphasis added). Appellant disagrees and again respectfully asserts that charging based on a number of user frames sent or received when a communication is made, as in Furukawa, does not meet appellant's claimed "non-linear function" (emphasis added), as claimed.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #4: Claim 33

Appellant respectfully asserts that the subject matter of such claim is deemed novel in view of the arguments made hereinabove regarding Issue #2, Group #1.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "appellant make arguments similar to those discussed above, and claim 33 is therefore rejected for the same reasons." Appellant disagrees and respectfully points out that the subject matter of such claim is deemed novel in view of the arguments made hereinabove regarding Issue #2, Group #1.

Group #5: Claim 34

The Examiner has relied on Col. 43, lines 13-15 and Col. 21, line 65-Col. 22, line 2 in Furukawa to make a prior art showing of appellant's claimed technique "wherein each agent incurs a first reoccurring fee, each host controller incurs a second reoccurring fee greater than the first reoccurring fee, and each zone controller incurs a third reoccurring fee greater than the second reoccurring fee." Specifically, the Examiner has argued that in Furukawa "charges are made according [to an] amount of information transferred in the ICS user frame…[which means] the more information that is transferred by the user, the higher the charge each time the information is transferred."

First, appellant respectfully asserts that the tiered system in Furukawa is utilized for determining a priority of when network frames are sent (see Col. 43, lines 13-27). Thus, determining an order of when frames are sent does not affect the amount of information transferred, but only the order in which frames are transferred. Thus, it is simply inappropriate to combine such priority with charges made according to an amount of frames sent. Simply nowhere does Furukawa teach charging different fees for different classes of information collectors, and specifically not that "each agent incurs a first reoccurring fee, each host controller incurs a second reoccurring fee greater than the first reoccurring fee, and each zone controller incurs a third reoccurring fee greater than the second reoccurring fee," as claimed by appellant.

In the Examiner's Answer mailed 11/16/2006, the Examiner has argued that "[i]n Col. 43, lines 13-15, an 8-tiered system for classes is shown" and has further argued that "col. 22, lines 2-4 of Furukawa et al shows charges are made according [to the] amount of information transferred in the ICS user frame, meaning the more information that is transferred by the user, the higher the charge each time the information is transferred." In addition, the Examiner has argued that "[i]n this case, Furukawa et al shows more than one tier for different classes in the system."

Appellant disagrees and again respectfully asserts that the tiered system in Furukawa is utilized for determining a priority of when network frames are sent (see Col. 43, lines 13-27). Thus, determining an order of when frames are sent does not affect the amount of information transferred, but only the order in which frames are transferred. It is therefore inappropriate to combine such priority with charges made according to an amount of frames sent, as noted by the Examiner. Simply nowhere does Furukawa teach charging different fees for different classes of

information collectors. Specifically, Furukawa merely discloses that "charging is performed by counting ICS user frames to be sent or received when a communication is made" (emphasis added), which fails to even suggest that "each agent incurs a first reoccurring fee, each host controller incurs a second reoccurring fee greater than the first reoccurring fee, and each zone controller incurs a third reoccurring fee greater than the second reoccurring fee," as specifically claimed by appellant. Only applicant teaches and claims such a graduated fee structure that specifically differentiates between fees incurred for an agent, host controller, and zone controller.

Appellant again respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P063/01.305.01).

Respectfully submitted,

By: /KEVINZILKA/ Date: January 16, 2007

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